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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,131	09/12/2003	Torsten Leifert	964-031376	9074
28289	7590	05/23/2005	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			SHRIVER II, JAMES A	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/662,131	LEIFERT, TORSTEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	J. Allen Shriver	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 February 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6,8-14 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,8-14 and 17-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 1 in the reply filed on February 22, 2005 is acknowledged.
2. Claims 7, 15 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 22, 2005.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

4. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

*Drawings*

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 4 and 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings submitted are informal. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the

Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claims 1-2, 4-6, 9, 11, 13-14 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Chernoff et al. (US Patent 6,830,117 B2).** Chernoff et al. discloses an industrial truck (10) comprising spaced axles (See Figs. 1-4); an electrical drive system (127); an energy supply of at least one gaseous medium (See column 13, lines 45-55); and at least one pressure vessel (121) for the storage of the at least one gaseous medium installed in a mounting device (69) that can be replaced with the at least one pressure vessel, wherein the mounting device is located in a lower portion of the industrial truck between the spaced axles (See Figs. 1-4); [claim 2] wherein the at least one pressure vessel in the industrial truck is refillable while the pressure vessel and/or the mounting device are installed in the industrial truck; [claim 4] wherein the mounting device corresponds in terms of its mechanical connecting elements and electrical connections to a battery tray; [claim 5] including a battery tray connectable to the devices and connections of the industrial truck to accept the mounting device; [claims 6, 11 and 13-14] including a fuel cell (125) system configured to generate electrical energy from the gaseous

medium; [claim 9] wherein control and monitoring devices for operating systems and devices for generation of electrical energy are permanently installed in the industrial truck; and [claim 18] wherein the control and monitoring devices are located on a driver's control console (inherent for the proper operation of the vehicle, so that the operator can monitor the operation of the fuel cell).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 3, 8, 10, 12, 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chernoff et al. (US Patent 6,830,117 B2).** Chernoff et al. discloses the industrial truck as set forth above including a driver's seat (inherent), the mounting device (69) located between the spaced axles with respect to a longitudinal direction of the truck, wherein the mounting device includes at least one pressure vessel (121) for storage of at least one gaseous material and wherein the mounting device is located under the driver's seat. Chernoff et al. does not disclose wherein the mounting device includes additional devices (power source) for the generation of electrical energy from the gaseous medium. Chernoff et al. discloses the power source (125, fuel cell) located separately from the mounting device holding the pressure vessels. The court has held the rearrangement of parts to be an obvious matter of design choice when shifting the position of the parts would not have modified the operation of the device. See *In re*

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*Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to move the fuel cell (power source) into the mounting device with the pressure vessels in the vehicle disclosed in Chernoff et al. The motivation for doing so would have been to consolidate the fuel cell and pressure vessels together in order to reduce the amount of hose needed to couple the fuel cell to the pressure vessel.

Regarding claim 8, Chernoff et al. discloses a main flow of air supply to devices for the generation of electrical energy from the gaseous medium (See column 14, line 47+), but does not specifically disclose wherein the air supply runs at a right angle to a longitudinal axis of the truck. As set forth previous above in *Japikse*, it would have been an obvious matter of design choice to position the main supply of air to run at a right angle to the longitudinal axis of the truck. Regardless of the position of the main supply of air in relation to the longitudinal axis of the truck, the fuel cell would still operate regardless of the angle of the main air supply.

Regarding claim 17, although Chernoff et al. does not specifically disclose wherein the industrial truck is a fork-lift truck, Chernoff et al. does disclose allowing a multitude of body styles to be mounted on the vehicle chassis. Therefore, it would have been obvious to a person of ordinary skill in this art to provide a fork-lift truck body to be mounted on the universal chassis disclosed in Chernoff et al.

### ***Conclusion***

11. The prior art made of record in the accompanying PTO Form 892 and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (571) 272-6698. The examiner can normally be reached on Monday, Wednesday and Thursday 5:30 am-5:00 pm and Tuesday 5:30 am-11:00 am.

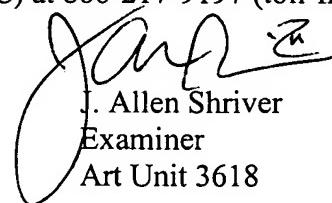
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris P. Ellis can be reached on (571) 272-6914. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Or faxed to: (703) 872-9306 (for formal communications intended for entry). (571) 273-6698 (for informal communications directly to the Examiner).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Allen Shriver  
Examiner  
Art Unit 3618

JAS